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December 1, 2006

Steven F. Alder  
State of Utah, Office of the Attorney General  
BY FAX: (801) 538-7440

Division of Oil, Gas & Mining  
P.O. Box 145801  
1594 W. North Temple, Suite 1210  
Salt Lake City, UT 84116

RE: Administrative Appeal of Application Denial, Request for Agency Action;  
Notice of Appeal

Dear Mr. Alder, et al:

This letter is in response to your letter of November 17, 2006, as well as our telephone conversation of December 1, 2006. I've spoken with my client who assures me that the application designated approximately 5 acres of some 27 plus acres in which Wright-Garff owns the exclusive mineral interest. Approximately one acre of that five acres holds the designated sites for certain stacked-up boulders belonging to Wright-Garff because, my client tells me, mere removal of those boulders is also considered mining activity. Once those boulders are removed, that acre would no longer be necessary to our proposed mining operations. The other four acres would be utilized to mine the Peo mine pit, together with the appurtenant operations for splitting removal and stacking. Thus, our application already does just what you requested. Accordingly, we deny there is any failure of any information in the application that would justify not processing it.

As I advised you, our interpretation of U.C.A. Sec. 40-8-14(14) is somewhat different than yours. As I read the statute, subsection (a) states:

"Mining operation" means activities conducted on the surface of the land for the exploration for the development of, or extraction of a mineral deposit, including, but not limited to, surface mining and the surface effects of underground and situ mining, on site transportation, concentrating, milling, evaporation or other processing.

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Div. of Oil, Gas & Mining

(b) "Mining operation" does not include:

- (i) the extraction of sand, gravel and rock aggregate
- (ii) . . .
- (iii) . . .
- (iv) smelting or refining operations
- (v) offsite operations and transportation
- (vi) reconnaissance activity; or
- (vi) activities which will not cause surface resource disturbance or involve the use of mechanical earth moving equipment such as bulldozer or backhoe.

The present activities done by Lon Thomas and his associated entities are not mining activities. There is some off site operations and transportation, some industrial splitting and cutting of stone, but no extraction, exploration or development of mineral deposits. In short, since the lease with Wright-Garff terminated, our position that Lon Thomas is no longer engaging in mining activity on the premises. There is mining activity on an adjoining lot, but we don't understand Lon Thomas to be involved in that permit. Accordingly, we request the Agency take an action to revoke or modify his permit as appropriate and act on our permit as submitted.

With regard to your interpretations of the decision of Judge Brian, we differ substantially. Judge Brian's interpretation was that the surface rights were subservient to the dominant mineral rights and that we had the right to reasonable access to ingress and egress related to mining activities, as well as surface use of the property appurtenant thereto. We believe this is *res judicata*, that all the issues by and between the parties have necessarily been decided, or if not decided, are barred by Thomas' failure to seek further declaration in that suit. In no way does my client submit to the Department of Natural Resources the authority to open, re-examine, modify, or nullify any of the decisions of Judge Brian already adjudicated.

Thus, we request that you reconsider your decision, go forward on our application, and act to revoke or modify the Thomas entities application as appropriate.

Again, we reiterate that we do not believe that any actual mining activity is going on by Thomas or his entities in the 27 acres of lot 38, but solely industrial processing appurtenant to the mining activity on the Thayne property. We request that you do an on site investigation to verify this fact.

If our time for appeal is not extended by this request and letter, then we do appeal, and in support thereof, aver as follows:

1. The names and addresses of all persons to whom a copy of the request for agency action is being sent are set forth above. The Division's file number is \_\_\_\_\_.
2. Legal authority and jurisdiction under which the matter is requested is pursuant to R647-4-1 *et seq*, R647-5-1 *et seq*, R64-5-104, R64-5-106. Appeal of agency action dated October

30, 2006 and response November 17, 2006

3. The name of the adjudicated proceeding is Notice of Appeal of Application Denial and Request for Agency Action. The date of the Notice of the agency action was October 30, 2006; followup November 17, 2006.

Request is hereby made for an informal hearing or informal proceedings and to be provided for any and all forms necessary to pursue same. If additional information is necessary from us in order to process this application or appeal or act on our request, please advise and we will supply same as soon as possible.

We incorporate by reference our prior appeal request dated November 10, 2006.

Thank you very much for your attention to this matter.

Sincerely,



STEVEN A. WUTHRICH